U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 15 2010

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IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a information technology company. It seeks to employ the beneficiary permanently in the United States as a senior software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. As required by statute, the petition was accompanied by a labor certification from the Department of Labor. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and denied the petition accordingly. The AAO in these proceedings will also examine whether the petitioner has established that the beneficiary is qualified for the advanced degree visa preference classification.

On appeal, counsel submits a brief and additional evidence.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the U.S. Department of Labor. *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the ETA Form 9089 was accepted on November 20, 2006. The proffered wage as stated on the ETA Form 9089 is $34.69 an hour or $72,155.20 per year. On the ETA Form 9089, Part J, signed by the beneficiary on January 12, 2006, the beneficiary did not claim to have worked for the

petitioner.[1] On the petition, the petitioner claimed to have an establishment date in 1997, a gross annual income of four million dollars, and to employ 55 employees.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

In support of the petition, the petitioner submitted its 2003, 2004, and 2005 tax returns, along with the beneficiary's W-2 Forms for tax years 2004, 2005, and 2006. These latter documents indicate the petitioner paid the beneficiary $8,950.90 in 2004; $37,168.04 in 2005; and $47,609.57 in 2006. The petitioner also submitted pay records for October, November and December 2006.

Because the director deemed the evidence submitted insufficient to demonstrate the petitioner's continuing ability to pay the proffered wage as of the priority date, the director issued a request for further evidence to the petitioner on August 15, 2007. In accordance with 8 C.F.R. § 204.5(g)(2), the director specifically requested that the petitioner provide copies of annual reports, federal tax returns, or audited financial statements to demonstrate its continuing ability to pay the proffered wage beginning on the 2006 priority date. The director noted that the petitioner had filed at least fourteen other I-140 petitions and requested further evidence that the petitioner could pay the difference between the beneficiary's actual wages and the proffered wage as well as the difference between the actual wages and the proffered wages for the other I-140 beneficiaries with pending applications.

In response, the petitioner submitted its Internal Revenue Service (IRS) Form 1120 U.S. Corporation Income Tax Returns for the year 2006, the beneficiary's Form 1040 for tax year 2006, and the petitioner's W-2 Forms for 89 employees for tax year 2006. The petitioner also submitted a list of 24 individuals it identified as beneficiaries of pending I-140 applications, their proffered wages and their actual wages, where applicable, in tax year 2006.[3]

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[1] Based on the W-2 Forms for 2004 and 2005 submitted to the record with the I-140 petition, the beneficiary worked for the petitioner during those years. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states: "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice."

[2] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

[3] The AAO notes that on this table the petitioner indicates that it paid the beneficiary wages of $63,175.49 in tax year 2006, while his W-2 form for 2006 submitted to the record indicates he

The petitioner's 2006 tax return reflect the following information:

Net income	$232,782
Current Assets	$256,231
Current Liabilities	$ 13,594
Net current assets	$242,637

The director determined that the evidence submitted did not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date, and, on December 19, 2007, denied the petition.[4] In his decision, the director noted that the petitioner paid only a small number of beneficiaries with pending I-140 applications in excess of the proffered wage, and that most of the beneficiaries were paid less than the proffered wage. The director also noted that even though the petitioner had remunerated some of the beneficiaries in excess of the proffered wage and had paid a total of $1,751,684.39 in wages in 2006, this did not establish the petitioner's ability to pay the proffered wage in all petitions filed. The director noted that the record did not indicate that the excess of wages paid to some beneficiaries was otherwise available to pay the shortage between actual wages and proffered wages, including the proffered wage of the beneficiary.[5]

On appeal, counsel submits the following documents:

> A second Excel document described by counsel as a revised analysis of the wages of pending I-140 beneficiaries. This document states that the $58,446.16 given as bonuses to employees could have gone towards the payment of salary deficiencies.
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> An Accountant's Compilation Report, for the year 2006 prepared by [redacted]
>
> A two page breakout of the wages paid to eleven individuals from January to December of an unidentified year. These individuals are identified on the petitioner's Excel sheet as I-140 beneficiaries, and include the beneficiary of the instant petition. The beneficiary's year-end wages, $7,408, are almost identical to the wages reported for him in tax year 2004, namely, $8,950.

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received wages of $47,609.57. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states: "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice."

[4] In his RFE and decision, the director stated that based on USCIS computer records, the petitioner had filed "numerous" I-140 petitions during the relevant period of time. In response to the director's RFE, the petitioner provided a list of 24 beneficiaries with pending I-140 petitions.

[5] The director added that USCIS computer record revealed at least four additional I-140 petitions not identified by the petitioner that raised further concerns regarding the petitioner's ability to pay the proffered wage.

A statement from [redacted], dated January 16, 2008. The writer states that the firm analyzed the petitioner's 2006 finances on an accrual basis and prepared a Summary Worksheet showing the petitioner's assets and liabilities as of December 2005 and 2006; and

Copies of the petitioner's monthly bank statements from PNC Bank and Bank of America for tax year 2006.

On appeal counsel asserts that, as of the appeal dated January 18, 2008, the petitioner had close to 100 employees, and has always been financially viable, has satisfied all its financial obligations towards its employees and has consistently shown profits on its tax returns.

Counsel also notes that while numerous I-140 petitions may have been filed, most of the beneficiaries of these petitions are currently on the petitioner's payroll. Counsel states that the priority dates for these employees were not established at the beginning of the year, and that the petitioner in recomputing its liability based on the actual priority dates for each beneficiary, computed as a wage deficiency, $231,086.11, a sum that can be covered by the petitioner's 2006 net income.

Counsel also states that in its 2006 tax return, the petitioner used a cash basis of accounting. Counsel also states that the petitioner obtained an alternate accrual basis accounting analysis from its accountant which shows that during 2006, the petitioner had approximately $1.2 million in cash and accounts receivables.[6] Counsel asserts that after subtracting the petitioner's liabilities from this

[6] The petitioner's tax returns were prepared pursuant to cash convention, in which revenue is recognized when it is received, and expenses are recognized when they are paid. This office would, in the alternative, have accepted tax returns prepared pursuant to accrual convention, if those were the tax returns the petitioner had actually submitted to the IRS.

This office is not, however, persuaded by an analysis in which the petitioner, or anyone on its behalf, seeks to rely on tax returns or financial statements prepared pursuant to one method, but then seeks to shift revenue or expenses from one year to another as convenient to the petitioner's present purpose. If revenues are not recognized in a given year pursuant to the cash accounting then the petitioner, whose taxes are prepared pursuant to cash rather than accrual, and who relies on its tax returns in order to show its ability to pay the proffered wage, may not use those revenues as evidence of its ability to pay the proffered wage during that year. Similarly, if expenses are recognized in a given year, the petitioner may not shift those expenses to some other year in an effort to show its ability to pay the proffered wage pursuant to some hybrid of accrual and cash accounting. The amounts shown on the petitioner's tax returns shall be considered as they were submitted to the IRS, not as amended pursuant to the accountant's adjustments. If the accountant wished to persuade this office that accrual accounting supports the petitioners continuing ability to pay the proffered wage beginning on the priority date, then the accountant was obliged to prepare and submit audited

amount, the petitioner had a net working capital exceeding $916,000. Counsel states that based upon the totality of the petitioner's financial scenario, the petitioner can easily pay a wage deficiency of $330,095.

Counsel notes that the beneficiary during 2006 was on an extended unpaid leave and thus received less salary. Counsel also asserts that since the priority date for the instant petition is November 2006, the stated wage obligation during 2006 for the beneficiary should be minimal and not exceeding $72,000. Counsel also notes that during tax year 2006, the petitioner paid officer compensation of $113,650, and that more than $44,000 of this compensation went to the shareholders. Counsel states that the shareholders have the discretion to use their compensation towards the expenses of the business enterprise they own and thus, $44,000 could also be counted towards the petitioner's ability to pay the proffered wages of the beneficiary and other beneficiaries of other pending I-140 petitions.

With regard to the four additional petitions referenced by the director in his decision, counsel states that the petitioner did its best to account for all pending petitions, and that the petitioner may have filed "a few" substitution applications around July of 2007. Counsel also notes that some beneficiaries may have left the petitioner's employment.

On appeal, counsel states USCIS should prorate the proffered wages for the beneficiary and its other employees with pending I-140 petitions for the portion of the year that occurred after the priority date. We will not, however, consider 12 months of income towards an ability to pay a lesser period of the proffered wage any more than we would consider 24 months of income towards paying the annual proffered wage. While USCIS will prorate the proffered wage if the record contains evidence of net income or payment of the beneficiary's wages (and the other beneficiaries' wages) specifically covering the portion of the year that occurred after the 2006 priority date (and only that period), the petitioner has not submitted such evidence.

Counsel's reliance on the balances in the petitioner's bank accounts is also misplaced. First, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. With the petitioner's monthly balances for tax year 2006, the AAO notes that the funds used in one month to pay the difference between actual wages and proffered wages for the beneficiary and the other beneficiaries would no longer be available in subsequent months to continue to pay the difference. Third, no evidence was submitted to demonstrate that the funds reported on the petitioner's bank statements somehow reflect additional available funds that were not reflected on its tax return, such as the cash specified on Schedule L considered above in determining the petitioner's net current

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financial statements pertinent to the petitioning business prepared according to generally accepted accounting principles.

assets. The petitioner has not demonstrated that any other funds were available to pay the proffered wage.

The AAO would also note that the bonuses paid to employees in 2006, while a discretionary expense, have been paid out to the petitioner's workers. Thus, the bonus money would not be available as additional funds with which to pay the difference between actual wages and proffered wages of the beneficiary and any other beneficiary with a pending I-140 application. Further, the petitioner provided no evidence that any employees or shareholders who received such bonuses are both willing and able to allow the use of their bonuses to pay these differences.

Where the petitioner has submitted the requisite initial documentation required in the regulation at 8 C.F.R. § 204.5(g)(2), U.S. Citizenship and Immigration Services (USCIS) will first examine whether the petitioner employed and paid the beneficiary during the relevant period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner did not establish that it employed and paid the beneficiary the full proffered wage in 2006. Thus it has to establish its ability to pay the difference between the beneficiary's actual wages and the proffered wage. As noted by the director, the petitioner also has to establish its ability to pay the wages of all other beneficiaries with pending I-140 petitions. While not addressed by the director, the petitioner would also be obligated to pay each H-1B petition beneficiary the prevailing wage in accordance with DOL regulations, and the labor condition application certified with each H-1B petition. *See* 20 C.F.R. § 655.715.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. Federal courts have recognized the reliance on federal income tax returns as a valid basis for determining a petitioner's ability to pay the proffered wage. *See Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986). *See also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532, 536 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080, 1083 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647, 650 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Showing that the petitioner's gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient. In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. With regard to the petitioner's 2006 tax return, the petitioner's Form 1120S indicates a net income[7] of $232,782.[8]

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[7] Where an S corporation's income is exclusively from a trade or business, CIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's IRS Form 1120S. However, where an S corporation has income, credits, deductions or other adjustments from

Nevertheless, the petitioner's net income is not the only statistic that can be used to demonstrate a petitioner's ability to pay a proffered wage. If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, USCIS will review the petitioner's assets. We reject, however, any argument that the petitioner's total assets should be considered in the determination of the ability to pay the proffered wage. The petitioner's total assets include depreciable assets that the petitioner uses in its business. Those depreciable assets will not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage. Further, the petitioner's total assets must be balanced by the petitioner's liabilities. Otherwise, they cannot properly be considered in the determination of the petitioner's ability to pay the proffered wage. Rather, USCIS will consider *net current assets* as an alternative method of demonstrating the ability to pay the proffered wage.

Net current assets are the difference between the petitioner's current assets and current liabilities.[9] A corporation's year-end current assets are shown on Schedule L, lines 1(d) through 6(d). Its year-end current liabilities are shown on lines 16(d) through 18(d). If a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets. The petitioner's tax return for 2006 reflects net current assets of $242,637.

The petitioner has not demonstrated that it paid the full proffered wage. Based on its net income and net current assets for tax year 2006, the petitioner has established its ability to pay the difference between the beneficiary's actual wages and the proffered wage. However, as stated by the director,

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sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 23 (1997-2003) line 17e (2004-2005), and line 18 (2006) of Schedule K. *See* Instructions for Form 1120S, 2006, at http://www.irs.gov/pub/irs-pdf/i1120s.pdf (indicating that Schedule K is a summary schedule of all shareholder's shares of the corporation's income, deductions, credits, etc.). Because the petitioner had additional deductions shown on its Schedule K for 2006, the petitioner's net income is found on Schedule K of its tax return.

[8] The AAO notes that the record contains the petitioner's Forms 1120S for tax years 2003 to 2005, as well as the beneficiary's W-2 Forms for tax years 2003 to 2006. Since the priority date for the instant petition is November 2006, the earlier 2003 to 2005 tax returns are not dispositive in these proceedings with regard to the petitioner's net income and net current assets. However, the AAO will examine several items in these tax returns when it discusses the totality of the petitioner's circumstances.

[9] According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such as accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

USCIS computer records indicate the petitioner has filed numerous I-140 and I-129 petitions in the relevant period of time in question. The petitioner has not established that it has sufficient net income or net current assets to both pay the difference between the beneficiary's actual wages and the proffered wage; the difference between the actual wages and proffered wages of the remaining I-140 beneficiaries with pending I-140 applications; and its obligations to any H-1B beneficiaries.[10] Therefore, the petitioner has not established that it had the continuing ability to pay the proffered wage beginning on the priority date and onward.

The unaudited profit and loss financial statement that counsel also submits on appeal is not persuasive evidence. According to the plain language of 8 C.F.R. § 204.5(g)(2), where the petitioner relies on financial statements as evidence of a petitioner's financial condition and ability to pay the proffered wage, those statements must be audited. Unaudited statements are the unsupported representations of management. The unsupported representations of management are not persuasive evidence of a petitioner's ability to pay the proffered wage.

Counsel's assertions on appeal cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the petitioner that demonstrates that the petitioner could not pay the proffered wage from the day the ETA Form 9089 was accepted for processing by the DOL.

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonegawa,* 12 I&N Dec. 612 (BIA 1967). The petitioning entity in *Sonegawa* had been in business for over 11 years and routinely earned a gross annual income of about $100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonegawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the

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[10] USCIS computer records indicate the petitioner filed 421 I-140 or I-129 petitions during the years 2004 to the present. From 2007 when the instant I-140 petition was filed, to the present, the petitioner has filed 183 I-129 petitions and 27 I-140 petitions, including the beneficiary's petition. Most of these petitions were filed in 2007 during the relevant period of time in question.

beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In the instant case, based on the petitioner's tax returns for 2003 through 2006, the petitioner's gross receipts have increased each year going from $2,143,665 in 2003 to $7,320,334 in 2006. The same returns indicate that in tax years 2003, 2004, and 2005, the petitioner paid no salaries and wages, while paying significant consultant fees, usually indicated on Schedule A, Other costs.[11] Only in tax year 2006, does the petitioner pay $3,254,664 in wages and salaries.[12]

The amount of officer compensation is relatively modest in tax years 2003 to 2005, ($45,833, $55,000, and $55,000) while the petitioner paid officer compensation of $113,000 in 2006. While the petitioner does exhibit significant and growing gross profits, this fact is counterbalanced by the fact that the petitioner during tax years 2003 to 2005 appears to be operating as a clearinghouse for technical consultants, with no wages paid to any employees. With regard to tax year 2007, while the record contains no evidence of the petitioner's financial assets, USCIS computer records indicate a greater solicitation of I-129 temporary visa petitions. The petitioner provides no further evidence as to its reputation within the computer consulting field, or other factors that might establish further its business viability. Thus, the record, beyond the petitioner's gross receipts, does not provide substantive evidence as to the petitioner's business viability.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

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[11] In tax year 2003, the petitioner submitted no statement to explain what the sum of $1,816,062, identified at line 5, "Other Costs," Schedule A, refers to.

[12] The petitioner submitted its W-2 Forms for tax year 2006, but not any documentation as to total wages and salaries during the tax year. The fact that the record indicates that the petitioner did not pay any wages or salaries in tax years 2004 and 2005 confuses the record further, as the petitioner submitted the beneficiary's W-2 Forms for both 2004 and 2005. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states: "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice."